United States Court of Appeals

for the Second Circuit

PETITIONER'S BRIEF

74-1682 B

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No. 74-1682

JOHN WESLEY RALLS,
PETITIONER-APPELLEE

vs.

JOHN R. MANSON, COMMISSIONER OF CORRECTIONS OF THE STATE OF CONNECTICUT, RESPONDENT-APPELLANT

APPELLEE-PETITIONER'S BRIEF

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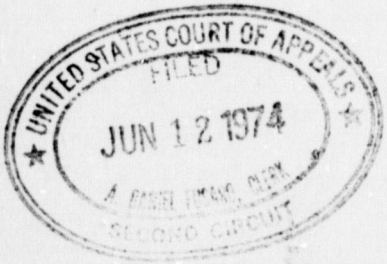

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ISSUES PRESENTED

1. Was the District Court correct in holding that Petitioner - Appellee need not, at this time, rely further on state appellate processes to adjudicate the appeal of his state conviction?

2. Was the Respondent - Appellant justified in refusing to brief the substantive claims below?

STATEMENT OF THE CASE

A. Chronology Of The Federal Litigation

This matter commenced with the filing of a pro se petition (Appendix P. 1) before the United States District Court for the District of Connecticut (Blumenfeld, J.), and the granting of an Order to Show Cause why a Writ of Habeas Corpus should not issue, on October 17, 1973. (Appendix p 4) Thereafter petitioner therein, John Wesley Ralls, through his appointed counsel, submitted an amended petition claiming that Mr. Ralls had sufficiently complied with 28 U.S.C. §2254 as to permit the federal court to determine the merits of his petition and that Mr. Ralls had been denied federal conditional rights in his conviction within the state court requiring a reversal of said conviction (Appendix p 5A)

The U. S. District Court then ordered counsel for the parties, upon their consent, to dispense with oral evidence, to complete the submission of affidavits, exhibits and briefs by February 15, 1974. (Appendix p. 5) This time was extended to March 15, 1974 by the Court upon agreement of the parties and their counsel, and on March 15, 1974, counsel for the state of Connecticut moved for permission to file an amended return, which motion was unopposed, and to dismiss or for summary judgment. On May 7, 1974, the U. S. District Court determined that "... the state court remedies are 'ineffective to protect the rights of the [petitioner],' 28 U.S.C. §2254(b)" (Appendix p 7) and proceeded to determine that petitioner had been deprived of his federal constitutional rights at his trial (Transcript p. 7)

On May 13, 1974, counsel for the State of Connecticut appealed the decision to this court and on May 17, 1974, on State's counsel's request, the U.S. District Court issued a stay on condition of an expedited appeal and typewritten briefs. Such conditions have been ordered by this Court from the Bench on June 4, 1974.

B. Facts Of The Case

On November 17, 1970, John Wesley Ralls (hereinafter called Ralls in accordance with Rule 28(d), Rules of Appellate Procedure), was convicted of murder in the Second Degree after a jury trial in the Connecticut Superior Court. (Appendix p. 66) On December 11, 1970, he received a sentence of life imprisonment and on December 30, 1970, appealed his conviction to the Connecticut Supreme Court (Appendix p. 66). Ralls is presently incarcerated at the Connecticut State Correctional Facility at Somers, Connecticut. His appeal has not yet been heard nor determined by the Connecticut Supreme Court. The chronology of the actions relating to Ralls' State appeal follows.

1. On December 30, 1970, trial counsel for Ralls requested an extension of time within which to file request for findings and draft findings, and on January 22, 1971, received an extension until 30 days after the filing of the transcript (Appendix p. 66). The Request is necessary under Connecticut practice (Connecticut Practice Book, §629, 630) and is to accompany the appeal which must be made within 20 days from sentencing (Connecticut Practice Book, §601). However, since the Request for Finding

must state the questions of law raised at the trial as to which review is desired, it must await receipt of the transcript of trial (Connecticut Practice Book §631). The Draft Finding, under Connecticut law, is to contain (a) proofs claimed by both parties; (b) requests for charges; (c) charges to which exceptions were taken; and (d) rulings made by the trial court (Connecticut Practice Book, §§629, 630, 648). Connecticut is the only jurisdiction in the nation to use this appellate system. (Appendix p. 84).

2. On July 28, 1971, the transcript of the Ralls trial was filed. (Appendix p. 66) The delay between notice of appeal and filing of the transcript was six months, 28 days. The reasons therefore, and the normal practices regarding transcripts were demonstrated in the uncontroverted affidavit of Joan E. Pagluicci (Appendix p. 97), who swore that reporters are only able to do transcripts on weekends, nights and Mondays.

3. On July 28, 1971, Ralls' counsel sought and obtained the same extension for his Draft Findings and Request for Findings as he had previously requested, i.e. until August 28, 1971.

4. On August 20, 1971, counsel for Ralls filed his Request for Findings and Draft Findings. The time period of over seven months between appeal and draft findings is average for Connecticut appeals (Appendix p. 86)

5. On August 27, 1971, the State requested an extension of time to file its counter-finding. A counter-finding is the adversary's response

to the Draft Finding (Connecticut Practice Book, Form 603(c)). Such extension was granted on September 15, 1971, until October 15, 1971 (Appendix p. 66). This was the first of 13 extensions of time obtained by the State to file its counterfinding (Appendix p. 66).

6. On October 15, 1971, the State obtained its second extension of time, until December 15, 1971.

7. On October 28, 1971, Ralls' attorney moved to withdraw, was so permitted, and Ralls' present State special defender was appointed (Appendix p. 66). Such counsel, on November 15, 1971, moved to file an amended draft finding, received such permission, and on December 15, 1971, requested an extension to so file. This was granted until January 5, 1972, and the amended draft findings were filed on January 3, 1972, some two months and four days after appointment of such counsel (Appendix p. 66).

8. On December 14, 1971, State's counsel, his extension about to expire, moved for another extension, and obtained it. (Appendix p. 66. On January 4, 1972, State's counsel obtained an extension until March 15, 1972.(Appendix p. 66) Another was granted until March 23, 1972, and on March 23, 1972, State's counsel moved to extend until May 1, 1972. (Appendix p. 66). On May 1, 1972, the State asked for another month, saying:

> The State is currently overwhelmed with 51 appeals to the Supreme Court of Connecticut and several appeals to the U.S. Court of Appeals for the Second Circuit; by petitions of habeas corpus to both the

State and Federal Court and by hearings under the Federal Civil Rights Act. The counterfinding will be completed this month.

(Appendix p 92)

9. On May 31, 1972, the State asked for an extension up to July 31, 1972. After reciting the language above, the State's attorney again said "The Counter-finding will be completed this month." (Appendix p. 93) It received its extension.

10. On July 31, 1972, the State repeated the litany again, but this time promised nothing as to completion. (Appendix p. 94). Its extension received was up to September 11, 1972. (Appendix p. 94). Its next extension was up to October 2, 1972. On September 11, 1972, it requested and obtained an extension up to November 13, 1972. On November 14, 1972, it requested an extension until December 18, 1972, saying the counter-finding was finished, but only partially typed due to "illness in the secretarial staff". (Appendix p. 95). Otherwise, its reasons were as they had constantly been, overwork. On December 6, 1972, the State received an extension until March 15, 1973, saying that it was "overwhelmed with numberous appeals", but not speaking of the typing.

11. On January 5, 1973, the counter-finding was filed by the State. (Appendix p. 66). During the period up to such filing, Ralls did not acquiesce in such extensions, and according to his testimonial account of the chronology submitted to the U. S. District Court,

> On September 9, 1972, I wrote a letter to Mr. Williams indicating my impatience and agitation at the delay and requesting that he file any and all motions to prevent unjust delay on the part of the prosecution. I did receive a letter from Mr. Williams on September 13, 1972, but it did not mention that he had consented to the State's motion for an extension of time.
>
> (Appendix p 100)

In his submitted testimony to the U. S. District Court, Ralls' State special defender said, as to the State's extensions

> 9. That your deponent did not object to any of the ten motions and orders for extensions of time, and did in fact stipulate to the last extension of time dated December 6, 1972.
>
> 10. That your deponent did not object to these extensions because he had been told by Jerold Barnett, State's counsel on the case that he was overworked, that he was receiving insufficient help, that he was then working nights and taking work home on weekends and that the work was ruining his family life. Indeed, your deponent would often pass Mr. Barnett's office late at night and notice that he was there working.
>
> 11. That another reason for not objecting was that your deponent had several times objected to extensions of time in appeals to the Connecticut Supreme Court and that these motions for time extensions had nevertheless been summarily granted. Thus your deponent felt that such opposition would be futile, and would serve no purpose other than to irritate Mr. Barnett who could not, without additional assistance, move the case along more quickly. Nevertheless, your deponent did request that Mr. Barnett give preferential treatment to Mr. Ralls' case so as to expedite it, and in agreeing to the tenth extension of time, your deponent was informed by Mr. Barnett that the counter-findings had been finished and were in the process of being typed.
>
> 20. As to communicating with Mr. Ralls, your deponent did not, other than as mentioned above, communicate regarding the year's extension including the one consent to an extension, but your deponent has attempted to keep Mr. Ralls otherwise informed regarding the processes of the case on appeal.
>
> (Appendix p. 103)

12. At that point, January 5, 1973, the time lapse from sentencing on December 11, 1970, was as follows:

a) 19 days from sentencing to notice of appeal;

b) six months, 28 days for the transcript;

c) 22 days of defense time to prepare the Request for Finding and Draft Finding;

d) two months, 8 days of State general extensions;

e) two months, 5 days of defense extensions from appointment of new counsel until filing of amended Request for Finding and Draft Findings;

f) one year, one day of State extensions to file Counterfindings.

13. The Connecticut Practice Book provides for the notice of appeal request for finding, draft finding and counterfindings to take 30 days in toto (Connecticut Practice Book, §601, 629). In fact, studies performed by Ralls' federal counsel indicate, between November 1970 and January 1974, that the normal period between notice of appeal and findings, which are to be submitted within two weeks after the counterfinding (Connecticut Practice Book, §634) is over one year, and can be as high as two years (Appendix p. 69).

14. The findings in the Ralls State appeal were not finally completed by the trial court until May 2, 1973 (Appendix, p. 66), which is four months less three days after the counterfinding.

15. On May 10, 1973, State appellate counsel for Ralls requested and received until June 1, 1973, to file his Assignment of Error (Connecticut Practice Book, §651), and filed same on May 29, 1973, a period of 19 days. (Appendix p. 66).

16. In June of 1973, the documents necessary to constitute the Record on Appeal were sent by the Court Clerk of the Superior Court in New Haven to the printer, and these were returned on October 31, 1973 (Appendix p. 66). Thus five months elapsed solely for the printing of the Record on Appeal.

17. In July of 1973, one month after completing the Assignments of Error, Ralls' State special defender on appeal sent the appendix to the printer for printing. Such appendix (Connecticut Practice Book §§713, 716, 720, 721, 722) is necessarily printed under Connecticut practice (Connecticut Practice Book §722). The appendix is to accompany the brief, which is due forty-five (45) days after the Record is printed (Connecticut Practice Book §724, as amended). In the Ralls matter, the printer had substantial State of Connecticut legal work to do in July of 1973 (Appendix p. 108) which was not completed until October, 1973, by which time the Ralls work had been misplaced. In December of 1973, the printer received an inquiry regarding the whereabouts of the Appendix from Ralls State appellate counsel, and the material was discovered and galleys printed by February, 1974. The period for the printing of the Appendix was 8 months, including 4 months of printer "State overwork", 2 months of misplaced material and 2 months more to print the galleys to the appendix.

18. Upon receiving the Record on Appeal on October 31, 1973, but not having received the Appendix, State appellate counsel for Ralls moved to file a typewritten brief before the Connecticut Supreme Court (Appendix p. 111), citing the fact that unless typewritten briefs, and references to the transcript rather than the absent appendix, were permitted, counsel

would not be able to file his brief within the 45 day time period. In opposing the motion, counsel for the State asserted that:

> The defendant has failed to cite an unusual delay in the appeal process.
>
> (Appendix p. 112)

Going on, counsel for the State said:

> The defendant's claim that, without permission to file a typewritten brief, he will not have his brief within the time allowed by the Practice Book, is made frivolous because of the longstanding policy of the State's Attorney's Office and of the Courts to allow reasonable extensions of time within which to complete the brief.

At that point in time, November 14, 1973, Ralls appeal had been within the State Appeals process for thirty five (35) months. On December 4, 1973, the motion for typewritten briefs, and references to the transcript rather than the Appendix, was denied. (Appendix p. 114)

18. Having been denied typewritten briefs, Ralls State counsel requested and received from the State Trial Court, an extension until May 1, 1974, in order to obtain the Appendix, prepare the brief, and have the brief printed. (Appendix p. 115)

19. The last chronologically exact evidence before the U. S. District Court was that on March 12, 1974, 20 days after submitted the galleys of the appendix to the State counsel for Ralls, such galleys had not bee received by the printer for final printing (Appendix of Record) However, in order to determine the likely length of the remainder of such proceedings in the State Court, Ralls federal counsel submitted a series of statistical Tables of Connecticut public documents which Tables have been uncontroverted by counsel for the State. Such studies show that the average time for a criminal

appeal in Connecticut from notice of appeal to disposition is over thirty months (Appendix p. 71)

20. As to the remainder of the briefing, argument and disposition of the Ralls State appeal, upon the submission of Ralls' brief, the State would then have thirty days to file its brief, and a reply brief could be filed within the next 20 days. Additionally, extensions of time may again be obtained (Connecticut Practice Book §724). Cases are argued at the term subsequent to the one at which papers are completed, and provision is again made for continuance (Connecticut Practice Book §§711, 712). Decision usually occurs within four to six weeks thereafter. Finally, the Connecticut Supreme Court does not sit to hear argument during July, August or September nor to render decisions. (Appendix p. 103)

The above chronology represents the facts available to the U. S. District Court as of May 7, 1974, when that court reached its decision. Summarizing such chronology, almost seven months expired before receipt of the transcript, four months for the State Trial Court's findings, five months for the printing of the Record, eight months for the Appendix, and a period of about six months under the Connecticut Practice Book for the required processes of appeal, draft finding, counterfinding, assignments of error, appellant's brief, appellee's brief, reply, argument and decision. Thus, even omitting consideration of the one year's delay for the State's counterfinding, and the obvious impossibility of consideration during July, August and September, the Ralls case would have taken a minimum of 29 months from sentencing to decision, one month less than the average for Connecticut

appeals. The accumulation of the State's one year delay, and the absence of argument in the summer, will mean over forty-four (44) months and no decision until October or November of 1974.

In its Statement of Facts to this Court, counsel for the State, in addition to setting forth their version of the above, add a series of facts not a part of the Record, and not before the District Court, terming such items as "happenings" and of "overriding importance in this case." (Respondent's Brief, p. 17). Counsel paraphrases from a newspaper article written after the decision on appeal herein, which article compounds the hearsay nature of such material by itself paraphrasing from Ralls State appellate counsel as to how "... he had worked on the federal portion of the case with the two University of Connecticut professors ..." (Respondent's Appendix, p. 127). Additionally, counsel for the State asserts several other "happenings" which occured subsequent to the decision of the District Court. Regarding facts before the District Court, rather than happenings, federal counsel for Ralls obtained two affidavits from his State appellate counsel, and access to Ralls' correspondence with said counsel, all of which was placed on the Record below. Such State counsel has done no work on the federal case which does not appear on that Record, whether it be research, investigation, writing or proof-reading. Indeed such counsel saw no papers, other than his own affidavit, until they were filed in court. Surely counsel for the State appreciate that this case will be determined by this Court on the Record established below, and not on amorphous, alleged happendings.

ARGUMENT

POINT I

THE DISTRICT COURT CORRECTLY HELD THAT APPELLEE-PETITIONER NEED NOT, AT THIS POINT IN TIME, RELY FURTHER ON STATE APPELLATE PROCESSES TO ADJUDICATE THE APPEAL OF HIS STATE CONVICTION.

In its attack of the District Court's decision to accept jurisdiction over Ralls' habeas corpus petition, the state argues, on two separate grounds, that Ralls has failed to satisfy the exhaustion requirement of 28 U.S.C. §2254.

First, the state claims, as a matter of law, that inordinate delay in the on-going processing of a pending state appeal involving federal constitutional issues does not justify federal intervention. The state goes to great lengths to distinguish the cases relied upon by the District Court and Ralls below as applicable only to instances of delay in state collateral proceedings or involving an appellate process disrupted by a break-down in the attorney-client relationship.

Second, the state contends that the three and one half year delay in the completion of Ralls' state appeal is in large part attributable or was consented to by Ralls' state appellate counsel. Accordingly, the state argues, Ralls should now be barred from raising such delay as a basis for federal jurisdiction.

Both of appellant's claims were, of course, considered and rejected by the District Court, which found Ralls' "state court remedies ineffective to protect the rights of the petitioner,"[1] and proceeded to a consideration of the merits of his petition.

A. EXHAUSTION OF AVAILABLE STATE REMEDIES IS NOT A JURISDICTIONAL PREREQUISITE TO FEDERAL JURISDICTION, BUT ONLY A MATTER OF COMITY.

Although 28 U.S.C. §2254 does provide, as a general rule, that a state prisoner exhaust available state remedies prior to submission of a federal habeas corpus petition, it is well-established that the exhaustion requirement is not a jurisdictional prerequisite, but rather is founded upon flexible considerations of comity. Fay v. Noia, 372 U.S. 391 (1963); Darr v. Buford, 338 U.S. 200 (1950); Hensley v. Municipal Court, 411 U.S. 345 (1973); United States ex rel. Graham v. Mancusi, 457 F.2d 463 (2 Cir. 1972). Thus, while federal courts have traditionally favored a policy of deference to state judicial processes whenever possible, it has also been consistently recognized that the interests of comity and a harmonious federal-state relationship must, under special circumstances, yield to a constitutional need for immediate determination of a federal claim. As the United States Supreme Court delcared in Bartone v. United States, 375 U.S. 52, 54 (1963):

> Where state procedural snarls or obstacles preclude an effective state remedy against unconstitutional convictions, federal courts have no other choice but to grant relief in the collateral proceedings.

This Circuit has similarly observed that "it must be remembered that the exhaustion doctine will not be invoked where it would result in a fundamental injustice." United States ex rel. Williams v. LaValle 487 F.2d 1006, 1015 (2 Cir. 1973). See Preiser v. Rodriguez, 411 U.S. 475, 497 (1973).

The issue before this Court is not, therefore, simply whether or not petitioner has exhausted available state remedies, but rather whether,

given the special circumstances of this case, such remedies can be deemed adequate to protect the federal rights involved.

B. IN CASES INVOLVING INORDIANTE AND UNJUSTIFIED STATE APPELLATE DELAY, FEDERAL COURTS HAVE HELD THE NEED FOR PROMPT VINDICATION OF FEDERAL RIGHTS EXCEEDS THE INTERESTS OF COMITY AND REQUIRES THE EXERCISE OF FEDERAL JURISDICTION.

Federal courts faced with instances of inordinate delay in state appellate processes have consistently recognized the duty to assume federal jurisdiction, pending state appeals notwithstanding, upon a determination that such delay is unjustified. West v. Louisiana, 478 F.2d 1026 (5 Cir. 1973); Dixon v. Florida, 388 F.2d 424 (5 Cir. 1968); Smith v. Kansas, 356 F.2d 654 (10 Cir. 1966); Way v. Crouse, 421 F.2d 145 (10 Cir. 1970); Dozie v. Cady, 430 F.2d 637 (7 Cir. 1970); Odsen v. Moore, 445 F.2d 806 (1 Cir. 1971); Barry v. Sigler, 373 F.2d 835 (8 Cir. 1967); United States ex rel. Graham v. Mancusi, supra.

While the state is correct that many of the cases dealing with appellate delay involve collateral proceedings in state courts, and thus rely in part on the element of speed historically required of state and federal courts when considering habeas corpus petitions, the underlying constitutional basis for federal intervention cannot logically be limited to collateral proceedings. As the Fifth Circuit Court of Appeals, per Judge Wisdom, recently explained:

> The principle that federal courts should defer to state courts in the interests of comity assumes that the state courts will give prompt consideration to claims of violations of federal rights. ...

In the absence of an adequate state mechanism,

> "the need to assure prompt protection for federal rights may supersede the policy in favor of state judicial processes so that a federal court may proceed to the merits of a habeas petition even though the petitioner has not exhausted state remedies."
> West v. Louisiana, 478 F.2d 1026, 1034 (5 Cir. 1973).

It is then the state's failure, through delay, to vindicate promptly violations of federal rights that gives rise to the need for federal intervention. Whether such failure occurs during direct or collateral appellate proceedings is material only to the standard by which the length of the delay is measured, not to the propriety of federal jurisdiction.

In several instances, an inordinate delay in state direct appeal processes has been held to constitute a denial of due process prompting the exercise of federal habeas corpus jurisdiction. In Way v. Crouse, 421 F.2d 145 (10 Cir. 1970), an eighteen month delay in perfecting a Kansas prisoner's pending direct appeal formed a basis for federal jurisdiction in the absence of an adequate justification. Similarly, in Dozie v. Cady, 430 F.2d 637 (7 Cir. 1970), the Seventh Circuit Court of Appeals remanded to the district court a case involving a seventeen month delay in pending state direct appeal proceedings, after the district court had originally dismissed the petition for failure to exhaust state remedies. See Tramel v. Idaho, 459 F.2d 57 (10 Cir. 1972) (three to four year delay in direct appeal); Odsen v. Moore, 445 F.2d 806 (1 Cir. 1971) (thirty-four month delay in direct appeal).

The state's attempts to distinguish these cases are not persuasive. Contrary to the state's assertion, Way v. Crouse, supra, clearly "held that the district court should not have dismissed the petition without inquiring into the facts and circumstances underlying the alleged delay." Way v. Gaffney, 434 F.2d 997 (10 Cir. 1970). As the state itself surprisingly

cites, the court in Crouse explicitly stated:

> Just as a delay in the adjudication of a post-conviction appeal may work a denial of due process, so may a like delay in the determination of a direct appeal. The question presented here is in what court should petitioner seek vindication of his asserted constitutional grievance. In our view, Way properly resorted to the federal court, which should not, without knowing the facts and circumstances of the eighteen month delay, have required him at this late date to commence a completely new and independent proceeding through the very courts which are responsible, on the face of the pleadings, for the very delay of which he complains.
> 421 F.2d at 146-7.

Any doubt as to the applicability of Crouse to something more than Way's motion for bail is conclusively dispelled by the Tenth Circuit's subsequent holding in Tramel v. Idaho, 459 F.2d 57 (10 Cir. 1972). In Tramel, the court, relying on Crouse, again reversed a district court dismissal of a habeas corpus petition where the state appeal had been pending for over three years.

Nor does Dozie v. Cady, supra, stand, as the state contends, for the limited proposition that only when the attorney-client relationship breaks down, thereby disrupting the on-going appellate processes, is federal intervention justified. Although Dozie did have problems with his attorney, the court's remand indicates the need for a broader inquiry, as the district court conducted in the instant case, into the causes and justifications for the appellate delay.

Appellant's reliance on United States ex rel. Wilson v. Rowe, 454 F.2d 585 (7 Cir. 1971) is also misplaced. In Wilson, the Seventh Circuit Court of Appeals held that the generally time-consuming nature of Illinois appellate proceedings was not a sufficient reason, by itself, for federal intervention. The delay in Wilson's appeal, at the commencement of the

federal action had, however, only been five months, a delay "not of the nature to shock the judicial conscience." 454 F.2d at 587. Furthermore, in the face of counsel's deliberate and apparent attempts to circumvent the state appellate process, the court further noted that much of the delay had been caused by the quest for federal jurisdiction. Wilson, thus, did not involve either lengthy or unjustified delay, and the court clearly indicated its decision was limited to the particular facts before it:

> This is not to say that factual situations may not exist wherein the state procedures are "ineffective to protect the rights," [28 U.S.C. §2254b] in which case the district court could find the situation appropriate for the exercise of power. That simply is not the situation in the case before us, where it appears obvious that the petitioner is attempting to substitute federal habeas corpus proceedings for his direct state appeal.
>
> 454 F.2d at 589.

Established precedents thus support the conclusion that in cases involving inordinate and unjustified appellate delay in direct or collateral proceedings, federal courts have recognized the need for prompt vindication of federal constitutional rights and have accepted jurisdiction over habeas corpus petitions, pending state proceedings notwithstanding.

C. THE DELAY IN THE CONNECTICUT APPEAL OF PETITIONER'S CONVICTION HAS BEEN INORDINATE AND UNJUSTIFIED AND NECESSITATES THE EXERCISE OF FEDERAL JURISDICTION.

1. The State Appellate Delay Has Been Inordinate.

Presumably, in the instant case, the State does not deny that there has been an inordinate delay in the adjudication of Ralls' state appeal. Ralls was convicted in state court on November 17, 1970, and initiated his state

appeal on December 30, 1970. To this date, over three and one half years later, briefs have yet to be submitted to the Connecticut Supreme Court, the appeal has not been docketed for oral argument, and final decision is still months and possibly years away. Throughout this period, Ralls has remained incarcerated. In no reported case involving delay in a state's direct appellate process has the delay equalled the more than forty-two months at issue here; in cases involving unjustifiable delay one half as long, federal courts have seen the need to accept jurisdiction. Dozie v. Cady, supra, (17 months); Way v. Crouse, supra, (18 months).

Indeed, the American Bar Association Special Committee on Minimum Standards for the Administration of Criminal Justice (headed by now Chief Justice Burger and Judge J. Edward Lumbard), in its presentation of Standards Relating to Criminal Appeals, labels state appellate delay of ten to eighteen month "excessive" and a "cause for growing concern;"[2] here, the delay is two to four times as great as that condemned by the committee. Thus, there would seem to be no question that the appellate delay Ralls has endured is certainly inordinate.

2. The State's Attempts To Justify The Delay Are Without Merit.

The State argues, however, that the delay in Ralls' appeal was caused or consented to by him and his counsel, and thus cannot legitimately serve as a basis for waiver of the exhaustion requirement. Specifically, the state challenges:

(a) the seven and one half months requested by Ralls' original appellate counsel prior to filing a request for finding and draft finding,

as required under Connecticut appellate procedure, Connecticut Practice Book [P.B.] §629;

(b) the four and one half months consumed by Ralls' decision to change appellate counsel and the time needed by new counsel for filing an amended request for finding and amended draft finding; and

(c) the thirteen months of extensions granted to the state, with Ralls' counsel's consent, for the preparation of the state's counterfinding.

Thus, according to the state, of the thirty-four months of delay at the time of the filing of the federal habeas corpus petition, twenty-five are either attributable or consented to by Ralls, leaving only a thirteen month delay in the appellate process. Presumably, the state would argue that thirteen months is not an unreasonable length of time for a direct appeal.

a. The State Appellate Delay In This Case Was A Necessary And Inevitable Result Of Existing Connecticut Appellate Procedures.

Implicit in the state's attempt to hold Ralls liable for the extensions of time granted both sides during the pendency of Ralls' appeal is the assertion that the state litigation would now be concluded were it not for such extensions. This assertion is directly contrary to the facts, as found by the District Court, not only with respect to this case, but to the Connecticut appellate process in general. As a matter of fact and a matter of practice, extensions similar to the ones at issue here are a necessary and inevitable result of the peculiar requirements of Connecticut appellate procedures; not only are the extensions granted in this case typical of criminal appeals in Connecticut, but the delay resulting from such exten-

sions is comparable, and in some respects less than the average time required for perfection and adjudication of most criminal appeals in Connecticut.

Under the rules pertaining to Connecticut appellate procedure set forth in the Connecticut Practice Book, Chapter 25, et. seq., a criminal appeal should ordinarily be assigned for oral argument before the Connecticut Supreme Court four to five months after a final judgment has been entered below,[3] with decision by the Supreme Court announced shortly thereafter. A statistical review of the past seventy criminal appeals decided by the Connecticut Supreme Court, as set forth in Exhibit 1, Table 1, attached hereto, reveals, however, that over the past three years, no criminal appeal has required less than ten months for completion,[4] and no full criminal appeal by a defendant has taken less than thirteen months.[5] As Table I clearly demonstrates, less than ten percent of the criminal appeals decided in Connecticut since November 1970 were completed in under eighteen months, with the overwhelming majority of cases requiring between eighteen and forty months, and the average amount of time required thirty months.[6] Undeniably, therefore, significant extensions of time to comply with appellate rules have been granted in every criminal appeal decided over the past three years.

Perhaps the foremost cause of this constant inability to meet appellate deadlines is the Connecticut court's reliance on what is known as the "finding." Unlike every other state and federal jurisdiction,[7] criminal appeals in Connecticut involving error not apparent on the face of the record must be supported by a document (in addition to the trial transcript) containing, "under separate headings, a statement, in consecutive numbered

paragraphs, of the relevant and material facts proven, the conclusions of the court, the claims of law made in the trial court with the rulings of the court thereon, and the rulings on evidence or other rulings on the trial which the appellant desires to have reviewed." [§614, Conn. P.B.; See §603, Conn. P.B.] This document, which often contains hundreds of paragraphs,[8] is known as the finding.

Under appellate rules, the appellant is required to submit a "request for finding" and a "draft finding" at the time the appeal is originally filed. [§629, P.B.] With rare exceptions, however, an extension of time is necessary for submission of draft findings. As Table II demonstrates, in less than ten percent of the applicable criminal appeals decided in Connecticut over the past three years did appellants submit draft findings with their original notice of appeal, while in over forty percent of the appeals requiring findings decided since November 1970, seven or more months were required before draft findings were submitted. In twenty percent of the appeals, ten or more months elapsed.[9]

While the submission of a draft finding is so delayed partly because the preparation of a finding is a lengthy and complicated process,[10] the preparation of the draft finding is often stalled for another reason. Sections 614 and 641, Connecticut Practice Book, require each paragraph of the draft finding to contain "... a reference to the page or pages of any transcript ... where the evidence supporting the finding, or proposed finding, or where the ruling appears. Thus, the draft finding cannot be completed until after the transcript of the trial proceedings has been prepared.

As the affidavit of court reporter Joan E. Pagliuco discloses, a delay

of several months in the preparation of a trial transcript is not at all unusual, as a result of a shortage of court reporters and inadequate time and facilities to keep up with the backlog of transcripts ordered.[11] While no precise statistics are available as to the average length of time required to prepare a transcript, six months is not, according to Ms. Pagliuco's uncontroverted affidavit, an excessive estimate of the average time involved. Indeed, in its brief to this Court, the state concedes that "a delay endemic to all Connecticut appeals is the requirement that the draft finding (and the counterfinding as well) contain appropriate references to the trial transcript."[12] The District Court found, as a matter of fact, that "trial transcripts ... regularly take several months to complete."[13]

Subsequent to the submission of the appellant's draft finding, Connecticut appellate rules allow ten days for the appellee to file a counterfinding [§631] and another two weeks for the actual finding of the trial court to be submitted. [§634] While no statistics are available with regard to compliance with the time requirements for counterfindings, a review of the applicable criminal appeals decided in Connecticut over the past three years reveals that the court's finding is almost always submitted in excess of the procedural deadline. In less than ten percent of the applicable cases were findings submitted within one month of the draft finding, while in over fifty percent of the cases, six or more months elapsed before findings were filed. In almost twenty percent of the cases, ten or more months were needed for the preparation by the trial court of the finding.[14]

The delay occasioned by the time needed for the preparation of the finding is especially significant because it is the Connecticut appellate procedure's involvement of the trial judge in the perfection of the record

on appeal that distinguishes the Connecticut appellate system from that of the other jurisdictions. As noted above, no other jurisdiction requires a finding, and thus no other jurisdiction requires the active participation of the trial judge in detailed review of the evidence and legal rulings at trial. It is, of course, self-evident that a busy trial judge will have little time to spend on the preparation of findings in all of his cases being appealed, and the statistical analysis set forth in Table II reveals the inevitable delay.

The delay occasioned by Connecticut's reliance on a "finding system" is especially unjustified because, as the District Court noted, the finding itself has no intrinsic value: if the purpose of the finding is specification of the issues raised on appeal [see Maltbie, Appellate Procedure in the Supreme Court of Errors of Connecticut 157 (2d Ed 1957)], there is no reason why that purpose cannot be adequately served by the procedure used in other jurisdictions whereby the parties submit briefs and a stipulated record consisting of those portions of the record below which reveal the issues on appeal. In any event, the transcript of what occurred at trial is the underlying and basic record; whenever a finding is challenged the court is required to go to that record anyway.[15]

A statistical analysis of the applicable criminal appeals decided by the Connecticut Supreme Court over the past three years indicates that the use of findings, draft findings and counterfindings inevitably results in substantial delay in the appellate process. As Table II reveals, in no case requiring findings since November 1970 has the procedural deadline of twenty-four days (from the date of notice of appeal through submission of a draft finding, counterfinding and finding) been met, and in fifty percent

of the cases one year or more has elapsed from notice of appeal to filing of the finding. In over seventy-five percent of the cases, eight or more months have been necessary.[16]

Furthermore, statistical analysis shows that most criminal appeals in Connecticut require between eighteen and forty months for adjudication, with one year or more of that time attributable to the problems associated with preparation of the finding. On the basis of such statistical evidence, the District Court found, as a matter of fact, that the average time required for completion of a criminal appeal in Connecticut over the past three years was thirty months.[17] Thus, it is undeniable that substantial delay is structurally inherent in the Connecticut appellate process. As the District Court specifically held, as a matter of fact based on the evidence presented to him, the Connecticut appellate process is marked by systematic delay:

> The delay suffered by [Ralls] in this case is not extraordinary. .... It is evident from the foregoing that criminal defendants appealing their convictions in the courts of Connecticut experience, as a rule, very lengthy delays in the appellate process.[18]

When measured against the average periods of delay present in Connecticut criminal appeals, it is clear that the extensions of time needed here by all parties to submit the draft finding, the counterfinding, and the finding are within the range of common periods of time generally required for perfection of criminal appeals in Connecticut.

Petitioner's original counsel filed his request for finding and draft finding within seven and one half months of the notice of appeal (and within one month of the receipt of the trial transcript). The state can hardly argue that seven and one half months is an unusually long time for

the submission of a draft finding. As pointed out above, in over forty percent of the applicable criminal appeals decided in Connecticut since November 1970, seven or more months were required for the submission of draft findings, and in twenty percent of the appeals, ten or more months elapsed before draft findings were submitted. (While there are no available statistics regarding time between receipt of the transcript and submission of the draft finding, certainly, the one to two months involved here is not excessive.) Thus, the original draft finding was filed in what is a normal period of time for Connecticut criminal appeals.

While Ralls' decision to seek new appellate counsel resulted in four and one half months for the submission of an amended request for finding and amended draft finding, the overall twelve months required for the draft finding in Ralls' appeal was still exceeded in over ten percent of the applicable criminal appeals decided in Connecticut over the past three years. Furthermore, Ralls' new counsel filed his amended draft finding within ninety days of appointment, hardly an excessive time in which to review the trial transcript and prepare a lengthy draft finding. The nine months (seven and one half and one and one half) actually required for the submission of the final amended draft finding was equalled or exceeded in over twenty-five percent of the applicable criminal appeals decided over the past three years.

A counterfinding was filed by the state in this case one year after the draft finding, with the trial court's finding submitted two months later, for a total period of fourteen months. While fourteen months may be somewhat longer than the average, as reviewed above, in over fifty percent of the applicable criminal cases, since or more months elapsed from the

submission of draft findings to the filing of the findings, and in almost twenty percent of the appeals, ten or more months were needed. Thus, the time required by the state and court, while longer than usual, was not overly excessive when compared with other appeals.

Similarly, while the overall twenty-six month period from the filing of the notice of appeal to the submission of the finding is also in excess of what might be called the average, fifteen percent of the criminal appeals reviewed required eighteen months or more for similar steps, and the fact that counsel had been replaced during the twenty-six month period made the period not so unusual when compared with other Connecticut appeals.

Thus, while on an absolute standard, the appellate delay in Ralls' case is grossly inordinate, relative to Connecticut standards, the appeal has only taken slightly longer than normal.[19] As has been documented herein and in the tables attached hereto, and as the District Court specifically found, extensions of time are an inevitable and omnipresent part of Connecticut appellate procedure, and the extensions granted in the course of the litigation of Ralls' state appeal, while perhaps slightly longer than average, are clearly not excessive nor unreasonable in the (limited) context of the general conduct of Connecticut appeals. Thus, rather than consenting to the delay caused by such extensions, Ralls has in fact been a helpless victim of the average or nearly-average time needed to perfect a criminal appeal in Connecticut. Because the time extensions are, accordingly, an inevitable element of Connecticut appellate procedures, Ralls' counsel's request for or acquiescence in such extensions cannot be used to justify the failure of the Connecticut Supreme Court to adjudicate Ralls' appeal.

b. Ralls And His Counsel Had No Choice But To Request Or Accede To The Extensions of Time Granted During The Pendency Of The State Appeal.

It is not necessary, however, for Ralls to rely upon the average requirements of Connecticut appellate process to escape liability for the twenty-five months of extensions put in issue by the state, for the special circumstances of this case indicate that Ralls had no choice but to request or accede to the extensions.

As has been pointed out above, the initial seven and one half month extension of time granted Ralls' original appellate counsel for the filing of the draft finding was occasioned by the unavailability of the trial transcript,[20] with the original draft finding submitted within one month of the filing of the transcript with the court. Dependent as he was upon completion of the trial transcript prior to preparation of a draft finding, Ralls can hardly be held liable for any delay caused by the transcript's unavailability. On the contrary, where, as here, preparation of the transcript is in the hands of court reporters employed by the state, the state has been and is properly held accountable for any appellate delay caused by the wait for the transcript. United States ex rel. Johnson v. Rundle, 286 F.Supp 765 (E.D.Pa. 1968). As the court in Johnson held, court reporters are agents of the state and their action, on inaction, renders the state open to a due process claim rising out of inordiante appellate delay. 286 F.Supp at 768.

The state's attempt to charge Ralls for the delay occasioned by change of appellate counsel, while colorable on its surface, also must fail. Ralls' request for new counsel was motivated by his belief that he had been

inadequately represented at trial by his original (appellate) counsel, a legal claim that his original counsel could or would not be expected to pursue; especially since Connecticut courts are reluctant to appoint special public defenders, [21] the trial court's willingness to appoint new counsel for Ralls confirms the legitimacy of Ralls' request and bars the state from now claiming Ralls should bear the burden for the ensuing four and one half month delay. Rather, since new appellate counsel was necessary for a full appeal, Ralls had no choice but to incur the delay of seeking a change of appellate counsel. Furthermore, in any event, the four and one half months put in issue by the state here, even if conceded, still leaves 32-33 months of inordinate delay.

The most substantial single period of appellate delay in Ralls' state appeal has been caused by the state's repeated requests for extensions of time in which to file a counterfinding. Prior to the change of appellate counsel by Ralls, the state requested and received without opposition a forty-five day extension of time in which to submit a counterfinding. Subsequent to the submission of the amended draft finding, the state requested and received without opposition ten more extensions of time, covering a period of twelve months, for the filing of the counterfinding. The state now claims that Ralls' failure to object to the requested extensions, through a motion to dismiss the appeal for failure to prosecute [§696], now precludes him from challenging the consequent thirteen month delay.

For several reasons, the state's claim has no merit. First, the language of the state's motions for extensions of time and the circumstances surrounding the state's attempt to prepare the counterfinding in this case

belie any apparent choice by Ralls or the trial court but to grant the requested extensions. The motions repeatedly aver that the state was "overwhelmed" and "innundated" by numerous appeals to prepare, and Ralls' state appellate counsel was well-aware, from personal knowledge, of the inadequate resources of the state's attorney's office.[22] The problem was, thus, not one of an absence of due diligence that could be corrected by a strict stand either by defense counsel or the court; rather the extensions were necessitated by a fundamental inability to meet the demands of sixty-seven pending direct appeals in state court as well as numerous other state and federal habeas corpus appeals. Quite simply, even had Ralls opposed the requested extensions, such opposition would have been to no avail.[23]

Secondly, Ralls cannot be bound by the thirteen months of extensions granted the state because he had no knowledge of them,[24] and would have opposed them had he known of them. Ralls at all times urged speedy completion of his state appeal and often inquired as to the reasons for delay. Ralls' lettersto appellate counsel reflect an "increasing agitation" over the delay, as well as Ralls' justified sense of helplessness to prevent further delays.[25]

Although waiver law in this area suggests that Ralls need not always personally participate in his counsel's strategic decisions for such decisions to be binding on him; Compare Henry v. Mississimi 379 U.S. 443 (1965) with Fay v. Noia, supra; the direct consultation and participation in any waiver situation required in Fay would seem necessary where, as here, Ralls himself received no conceivable benefit from his counsel's failure to oppose the requested extensions. Ralls has, of course, remained incar-

cerated throughout the pendency of his state appeal and faces continued incarceration until his appeal is decided.

In the absence, therefore, of a knowing and intelligent strategic decision by Ralls, after consultation with counsel, to approve the state's requests for extensions, and in the absence of any benefit, tactical or otherwise, to Ralls as a result of his counsel's failure to object, Ralls cannot be held bound by the thirteen months of extensions granted to the state for filing a counterfinding. Fay v. Noia, supra.

In the alternative, Ralls contends that his counsel's failure to oppose the extensions in the face of such a lengthy delay and so many requests constitutes ineffective assistance of counsel, and thus cannot serve to bind him. United States ex rel. Schaedel v. Follette, 447 F.2d 1297, 1300 (2 Cir. 1971).

Finally, Ralls submits that since his appellate counsel was appointed by the state, counsel's action, or inaction, constitutes state action. West v. Louisiana, supra. The state cannot, therefore, attempt to excuse the delay caused by one of its arms by relying on the failure of another arm to raise its hand in opposition. United States ex rel. Johnson v. Rundle, supra.

c. Even Conceding Arguendo The State's Claim Of Waiver, The Remaining Period Of Appellate Delay In The Completion Of Ralls' State Appeal Will Constitute A Due Process Violation.

Assuming, arguendo, that Ralls is foreclosed from challenging the thirteen months of extensions granted the state, without opposition, for the preparation of the counterfinding, [illegible] twenty-five additional

months of appellate delay have elapsed since the appeal was initiated, and the end is not yet in sight.

As reviewed in the Statement of the Case, above, even omitting the challenged thirteen month period, in addition to the six months allotted by appellate rule for perfection of a criminal appeal, seven months elapsed after the notice of appeal was filed before a trial transcript was completed, four months passed after the filing of the counterfinding before the trial court filed its counterfinding, and five months were necessary for the printing of the state appellate record. This cumulative period of 22 months[26] is totally attributable to the state, United States ex rel. Johnson v. Rundle, supra, and exceeds the eighteen month limit found by the district court to be the outer limit of permissible appellate delay. It should be pointed out that this eighteen month cutoff is itself at the outer limits of the ten to eighteen month period for completion of appeals found "excessive" by the American Bar Association Committee on Criminal Appeals.

Should the Court reverse the District Court on the jurisdictional issue and force Ralls to await state court determination, the minimum 22 months now attributable to the state would be greatly increased. Even assuming an expedited state process from this point on, the failure of the Connecticut Supreme Court to hear argument during June, July and August means that no matter how soon that briefs are submitted, the case could not be docketed for argument until September at the earliest, with final decision announced perhaps two months later. Thus, at best, five months more delay attributable to the state will result from a reversal on the jurisdictional issue, creating a minimum period of at least twenty-five to thirty months.

d. State Appellate Counsel Did Not Engage In Purposeful or Unintentional Dilatory Tactics In An Effort To Circumvent The State Processes.

As the state correctly argues, appellate delay caused by intentional dilatory tactics by counsel designed to circumvent the state process cannot justify the exercise of federal jurisdiction over claims pending before the state courts. United States ex rel. Wilson v. Rowe, supra; Lee v. Kansas, 346 F.2d 48 (10 Cir. 1965). Relying on this legal argument, the state contends in this appeal, for the first time, that Ralls' state appellate counsel engaged in such dilatory tactics by deliberately delaying the submission of Ralls' state appeal brief. Not only was this argument not advanced in the District Court proceedings, but the District Court found, as a matter of fact based on the evidence presented to it, that no such purposeful dilatoriness had occurred.[27]

The state's insinuations against state appellate counsel are factually and legally without merit. Ralls' pro se petition to federal court was filed before the state appellate record was printed and thus before the state appeal briefs became due. Unlike the fact situation in Wilson, supra, this is not a case where the appellate delay prior to submission of the federal petition resulted from inaction by counsel. The alleged dilatory tactics complained of in the instant case occurred after the petition was filed. The state makes no allegation that the thirty-four months prior to the filing of the federal petition resulted from counsel's desire to circumvent the state process; indeed, such an allegation would be preposterous.

State counsel's action or inaction after the submission of the federal petition is, in fact, irrelevant to the Court's decision on the jurisdictional issue; that decision is properly made on the basis of the circumstances of the delay at the time the petition was originally filed. Belbin

v. Picard, 454 F.2d 202, 204 (1 Cir. 1972)

Furthermore, the record clearly shows that even after the commencement of the federal action, state appellate counsel attempted to expedite the state appellate process. On October 31 1973, the day the record was filed with the Connecticut Supreme Court, state counsel sought permission to file typewritten briefs in advance of completion of his appendix. Counsel's motion was opposed by the state's attorney, who stated in his responsive pleading, "The defendant has failed to cite an unusual delay in the appeal process."[28] The motion was subsequently denied by the Connecticut Supreme Court, and state appellate counsel was forced to await receipt of the printed appendix before completing his appeal brief. In its brief to this Court, the state inquires rhetorically as to why state counsel did not prepare the state brief ahead of time so that when the appendix arrived he would only have to insert the appendix references. A more cogent question, however, is why did the state oppose the motion for typewritten briefs.

In any event, in light of counsel's efforts to expedite filing of the briefs, the state's attorney's opposition, and the denial by the court, it is hard to understand how the state can seriously contend that state appellate counsel for Ralls purposefully attempted to stall submission of the state appeal brief.

Finally in regard to this point, even had Ralls' state brief been submitted within the original forty-five delay period and the state's brief also filed in a timely manner, Ralls' state appeal would still, in June 1974, be nowhere near decision. Once all briefs had been received, approximately two months after the printed record reaches the Connecticut

Supreme Court, and thus in January 1974, the case would have been placed on the docket for oral argument. In the absence of any determination to expedite this appeal, the case would follow those case previously docketed before the court. As of February 1973, there were twenty-eight criminal appeals on the Connecticut Supreme Court docket.[29] Since over the past three years the Connecticut Supreme Court has decided less than 20 criminal cases a year,[30] it is unlikely that the appeal would be heard at the end of 1974 and probably not until 1975. Thus, on the date Ralls first requested the District Court to accept jurisdiction, had the state appeal proceded in an orderly fashion with due diligence and no further extensions, Ralls would still face one to two years of continued incarceration before his appeal would be determined.

3. Ralls Need Not File A Motion To Set Aside The Judgment, Pursuant To §696 Of The Connecticut Practice Book, To Challenge The Appellate Delay.

In the District Court, the state argued that even if there has been inordinate and unjustified delay in the appellate process, section 696 of the Connecticut Practice Book provides an available state remedy to challenge such delay and forecloses federal jurisdiction if such a motion has not been pursued. Section 696 deals with "Lack of Diligence in Prosecution or Defending Appeal" and provides that if a party fails to defend an appeal with proper diligence, the Connecticut Supreme Court may set aside the judgment under attack.

The state has apparently abandoned this argument on appeal, and now seems only to contend that state counsel's failure to make a §696 objection to the numerous requests for extensions to complete the counter- finding effectively waived any subsequent federal habeas corpus challenge to the delay occasioned by the extensions.[31] Because, however, the precise dimensions of the state's §696 argument are unclear from the brief, appellee will take the precaution of answering again the state's original contention that §696 provided an available remedy to challenge the overall delay.

For several reasons, §696 is not an applicable or available remedy to the appellate delay in this case. First, Ralls is not required, as a matter of law, to seek collateral state remedies while his direct appeal is pending. "Once the federal claim has been fairly presented to the state courts, the exhaustion requirement is satisfied." Picard v. Connor, 404 U.S. 270, 275 (1971); as the Supreme Court stated further in Wilwor- ding v. Swenson, 404 U.S. 250 (1971):

> Petitioners are not required to file 'repetitious applications' in the state courts. Brown v. Allen, 344 U.S. 443, 449 n. 3 (1953). Nor does the mere possibility of success in additional proceedings bar federal relief. Roberts v. LaValle, 389 U.S. 40, 42-3 (1967); Coleman v. Marshall, 351 F.2d 285, 286 (6 Cir. 1965).

The Second Circuit Court of Appeals has held that "under the traditional concepts of exhaustion, only one opportunity through proper channels need be afforded a state to pass upon a question before the habeas corpus court should look at the merits." United States ex rel. Weinstein v. Fay, 333 F.2d 815,819 (2 Cir. 1964); United States ex rel. Graham v. Mancusi, supra,

Secondly, §696 is inapplicable to this appeal because Ralls does

not contend that the state has failed to exercise due diligence in defending against his appeal. Rather, Ralls has argued above that the diligence of the state's attorney notwithstanding, the delay in this case was a necessary and inevitable product of Connecticut appellate procedures. Thus, since Ralls does not believe the Connecticut Supreme Court could properly find a lack of due diligence, §696 is not applicable.

Furthermore, now that the Connecticut Supreme Court has denied Ralls' motion for permission to file a typewritten brief, Ralls' state counsel has moved for a five month extension of time in which to file the printed brief on appeal. Given this defense request for an extension, Ralls is hardly in a position to contend that the state's requests for similar extensions have been improper.

Moreover, under Connecticut law, a §696 motion is not available in the face of compliance with extensions granted for good cause. As the Connecticut Supreme Court stated in State v. Ward, 134 Conn. 81 (1947):

> The various extensions of time granted by the trial court for filing appeal papers were made under provisions of the rules of court authorizing such action 'for good cause shown.' We must, in considering this motion, regard the extensions as properly granted, and as all papers will filed within the times fixed in them we cannot consider the failure by the defendants to file them earlier in determining whether they have prosecuted the appeals with reasonable diligence.

Chanosky v. City Building Supply Co., 152 Conn 448 (1965), cited by the state, does not hold to the contrary. In Chanosky, the extensions of time subject to examination as evidence of lack of due diligence in prosecuting the appeal were not supported by factual allegations of good time. The Connecticut Supreme Court makes clear that good cause will be sufficient to warrant an extension; the court hints that counsel in Chanosky "dall[ied] for the

purpose of bargaining with the opposition, for personal convenience, or because other cases in herf [were] deemed by them to deserve preferential treatment." 152 Conn. at 452.

Finally, the District Court correctly held that the possible remedy afforded by §696 is illusory, at least with respect to criminal appeals. The court found that in only two instances had a §696 motion been granted against the state, both involving cases where appeals from the circuit courts had previously been affirmed by an intermediary court.

Two recent Connecticut cases illustrate well the futility of reliance on a §696 motion. In State v. Roberson, Roberson's direct appeals from his two state court convictions had been pending more than two years, and the state had not filed a counterfinding, although presumably the state's attorney had obtained a number of extensions. In response to Roberson's motion, the state's attorney stated at oral argument that the counterfinding in the first conviction was being typed and would be filed within a couple of days, but the counterfinding for the second conviction was far from completion. The Connecticut Supreme Court granted the motion as to the first case unless the state filed its counterfinding within a short period of time. The court denied outright the motion with respect to the unfinished counterfinding. State v. Roberson, 35 Conn. L.J. 8 (1/15/74).

State v. Annunziato, ____Conn. L.J. ____ (12/4/73), provides an even more egregious situation, although the result is the same. Annunziato's appeal had been pending over three years without a counterfinding from the state's attorney. Furthermore, the state's latest extension of time in which to file the counterfinding had expired and had not been renewed. Nonetheless, Annunziato's §696 motion was denied.

POINT II

THE RESPONDENT-APPELLEE'S REFUSAL TO BRIEF THE SUBSTANTIVE CLAIMS WAS UNJUSTIFIED AND DOES NOT REQUIRE RECONSIDERATION OF THE DECISION BELOW.

Rule 12 of the Federal Rules of Civil Procedure.

> "... has abolished for the federal courts the age-old distinction between general and special appearances. A defendant need no longer appear specially to attack the court's jurisdiction over him... He may now enter openly in full confidence that he will not thereby be giving up any keys to the courthouse door which he possessed before he comes in."
>
> Orange Theatre Corp. v. Ratherstz Amusement Corp. 139 F2d 871,874 (3d Cir, 1944)

Even in those situations where jurisdiction is at stake, as against the arena of comity, a federal defendant may thus fully defend an action while remaining fully protected against unlawful exercises of jurisdictional power. In the Court below, Respondent therein had full opportunity to contest the constitutional claims of Ralls without in any way sacrificing its objections to the alleged failure of exhaustion of state remedies.

To have so acted, in accordance with the Federal Rules of Civil Procedure would not have indicated "willingness" to litigate, and therefore waive under U.S. ex rel Williams v. LaVallee, 487 F2d 1006, 1015 N.18 (2d Cir, 1973). What this Court said, in that note, is,

> Counsel for the state swore that "Williams has already exhausted his present contention in numerous, repetitive state court proceedings?"
>
> 487 F2d at 1015, N 18

It seems obvious that waiver occurs only where an inteligent and knowing,

or at least willful act occurs, as in U.S. ex rel Williams v. LaVallee, supra. The respondent below ought not be able to fail to litigate an issue for legally insufficient reasons, and thereafter argue that such reasoning is nevertheless excusable.

Further, respondent below claims the seriousness of the constitutional issues decided by the court below is such that the state court should have been given the opportunity to decide them. In fact, it was only after the state court had not so acted that the federal court did. Such decision ought not be disturbed absent some showing of its being in substantive error, and there has not only been no such showing, but in fact an acknowledgement of the issues as decided by U.S. v. Harrington, 490 F2d 487 (2d Cir, 1973) [Fingerprint card issue below] and U.S. v. Jenkins, 380 US 445, 85 S.Ct. 1059 (1957) [Allen plus charge].

The suggestion by the respondent below that consideration of the constitutional issues by the District Court, had respondent therein participated in litigating the constitutional claims might have promoted judical conflict of the worst sort, is totally unsupported. The District Court had such claims before it, had jurisdiction over them, stood ready to hear evidence and argument from all parties, and rendered its decision. In the absence of persuasive contrary argument on the merits of the substantive claims, the decision should stand.

NOTES

1. Decision of United States District Court, Ralls v. Manson, H-205, p. 26. See Appendix, p. 7, 33.

2. Standards Relating to Criminal Appeals, Approved Draft, 1970, American Bar Association Project on Standards for Criminal Justice, §3.4, pps. 91-3.

3. The appeal must be filed with twenty days of final judgment [§601, Conn. P.B.], accompanied by a request for finding and draft finding of the evidence and legal rulings from which error is alleged [§629]. Upon submission of the draft finding by the appellant, the appellee has ten days in which to submit a counterfinding [§631], and the trial court has another two weeks from the filing of the counterfinding in which to file the actual finding [§634]. Corrections to the court's finding must be submitted as soon as practicable [§636], and the appellant's assignment of errors is due ten days after corrections are made [§612]. The record is them complete, and the appeal is docketed with the Connecticut Supreme Court [§683]. The appellant's brief is then due within forty-five days, followed by the appellee's brief thirty days later. Reply briefs may be submitted in the next twenty days. [§724] Once the original briefs are submitted, the appeal is assigned for oral argument at the next monthly term of the court [§711], with an opinion issued in approximately six to eight weeks.

4. See Table I of this brief. State v. Villafane, 34 Conn. L.J. 46, which required ten months for adjudication, involved an appeal by the state concerning the dismissal of an entire jury panel by the lower court.

5. See Table I.

6. See Appendix B to Table I. By contrast, the average time required for adjudication of an appeal in New Jersey in 1971-2 was 15.3 months [Annual Report of the Administrative Director of the Courts of the State of New Jersey, pps. 8-9 (1973)]. In the federal system, the average time for a criminal appeal from July 1972 through June 30, 1973 was 8.8 months; in the Second Circuit, 6.1 months; in the District of Columbia Circuit, which had the longest appellate period, 13.5 months [compiled from the Administrative Office of the United States Court, Annual Report of the Director 1973, at p. A-7, Table B5; and Adminsitrative Office of the United States Courts, Management Statistics for United States Courts 1973, at p. f].

7. See Appendix, p. 84.

8. The finding in Ralls' appeal contained over seven hundred paragraphs.

9. See Table V, summarizing length of time between notice of appeal and draft finding as contained in Table II. See also Maltbie, Connecticut Appellate Procedure, (2d ed. 1957), ch V, §127, p. 156, where the author remarks that extensions of time are "the general rule."

10. It should be noted that the Connecticut Supreme Court requires unerring attention to procedural detail in regard to preparation of the finding. See Maltbie, op. cit., §128, p. 157.

11. Appendix, p. 97. [Affidavit of Joan E. Pagliucco]

12. Respondent's Brief, p. 8.

13. Decision of United States District Court [Decision], p. 18. See Appendix, p. 7, 25.

14. See Tables II, VI, and VII.

15. See Decision, p. 19, n. 34. Appendix, p. 7, 26 .

16. See Table II, Table VII.

17. Decision, p. 16. Appendix, p. 7, 23.

18. Decision, p. 19. Appendix, p. 7, 26. (Emphasis Added)

19. See Table I, II.

20. See Appendix, p. 66, 67.

21. See State v. Beaulieu, 34 Conn. L.J. 44.

22. See Appendix, p. 103. [Affidavit of John Williams]

23. See Decision, p. 24, n. 38. Appendix, p. 7, 31.

24. See Appendix, p. 100. [Affidavit of John Ralls] Decision, p. 26. Appendix p. 7, 23.

25. See n. 23, supra.

26. This 22 month period does not include the eight months required for printing of the appendix to Ralls' brief. Since the Connecticut Supreme Court refused to allow typewritten briefs with references to the transcript rather than the appendix, at least some portion of this eight month period is chargeable to the state as well.

27. Decision, p. 26. Appendix, p. 7, 33.

28. See Appendix, p. 112. [State's Memorandum in Opposition to Motion to File Typewritten Brief]

29. Source: records on file at Connecticut Supreme Court.

30. See Table I.

31. See Respondent's Brief, p.33: "The lack of objection by petitioner's counsel, under state law [§696], constituted a waiver of the right to claim a lack of diligence in the preparation of the counterfinding once that document was filed." 379 U.S. 443.

CONCLUSION

John Wesley Ralls, appellee herein, by his counsel, respectfully requests that this Court affirm the decision of the Court below, vacate the story ordered below, and order an immediate state re-trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

MORTON P. COHEN, an attorney licensed to practice law before the United States Court of Appeals for the Second Circuit, under penalty of perjury, deposes and says that he served two copies of the Brief for John Ralls, the Appendix of John Ralls to his brief, and the Appellee's Statement of the Underlying Crime, upon Jerrold W. Barnett, Esquire, personally at the office of the Chief State's Attorney, 8 Lunar Drive, Woodbridge, Connecticut, on June 12, 1974.

MORTON P. COHEN

DATED: June 12, 1974 at West Hartford, Connecticut.

TABLE I

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TABLE I

LENGTH OF TIME BETWEEN NOTICE OF APPEAL AND FINAL DECISION BY [illegible] SUPREME COURT

(CRIMINAL CASES)

(NOVEMBER 1970 - JANUARY 1, 1974)

AME OF CASE	DATE OF NOTICE OF APPEAL	DATE OF FINAL DECISION	LENGTH OF TIME (MOS.)
lyden	5/2/71	12/18/73	32
Sulman	5/15/70	12/18/73	43
Bzdyra	10/12/72	11/20/73	13
Peay	9/13/71	11/13/73	26
Palozie	11/4/70	7/24/73	33
Romano	2/9/71	7/10/73	29
Chrisholm	4/23/71	6/26/73	26
Delmonaco	12/1/70[1]	6/26/73	31+
Evans	10/8/70	6/19/73	32
Uriano	3/26/71	5/8/73	27
Villafane	6/30/72	5/1/73	10[2]
Bealieu	4/19/71	5/1/73	24
Brathwaite	4/8/71	4/24/73	25
Moynahan	3/19/70	4/24/73	37
Atkinson	4/17/70	4/3/73	36
Cobbs	1/6/69	4/3/73	51
Baker	3/26/71	2/13/73	23

18.	Clark	8/26/70	1/16/73	29
19.	Guthridge	11/6/70	12/26/72	26
20.	Cofone	6/15/70	12/19/72	30
21.	Kearney	12/29/67	12/12/72	59
22.	Dubina	10/10/69	12/5/72	38
23.	Ferraro	3/25/70	12/5/72	32
24.	Pascucci	4/16/70	12/5/72	32
25.	Keeler	9/4/70	11/7/72	26
26.	Edwards	3/23/70	8/22/72	29
27.	Mayell	2/3/70	8/1/72	30
28.	Hines	7/7/69	7/25/72	37
29.	Vega	12/22/69	7/4/72	30
30.	LaSelva	2/19/71	6/27/72	16[3]
31.	Lombardo	11/13/70	6/20/72	19
32.	Cari	12/23/68	6/13/72	42
33.	Krause	2/16/70	5/23/72	27
34.	Brown	12/1/70	5/16/72	19
35.	Grayton	6/5/70	5/9/72	23

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TABLE I CONT.

	NAME OF CASE	DATE OF NOTICE OF APPEAL	DATE OF FINAL DECISION	LENGTH OF TIME (MOS.)
36.	Chilsolm	12/8/70	4/25/72	17[4]
37.	Hawkins	3/31/70	3/21/72	24
38.	Jackson	9/9/70	3/21/72	18[5]
39.	Bausman	3/27/69	2/15/72	35
40.	Johnson	4/29/69	1/25/72	33
41.	Manning	9/27/68	1/11/72	40
42.	Pearson	10/21/70	1/4/72	26
43.	Bitting	4/10/70	12/21/71	20
44.	Delgado	12/20/67	12/7/71	48
45.	Husser	4/7/70	10/27/71	19
46.	Parker	1/15/69	8/31/71	32
47.	Savage	5/20/69	7/27/71	26
48.	Darwin	2/13/69	7/20/72	29
49.	Oliver	5/22/69	7/20/71	26
50.	Cobuzzi	2/23/68	7/13/71	41
51.	Pascucci	4/10/70	7/13/71	15[6]
52.	Briggs	10/30/69	7/8/71	19
53.	Greene	7/3/68	7/8/71	35
54.	Brown	3/14/69	7/1/71	27
55.	Raffone	5/12/67	4/20/71	47
56.	Farrah	1/1/69	3/30/71	26
57.	Tupko	11/28/69	3/24/71	16[7]
58.	Lemieux	5/23/69	3/17/71	22
59.	Mortoro	10/3/68	2/3/71	29
60.	Brown	7/25/69	1/26/71	18[8]
61.	Gelinas	11/5/67	1/26/71	40

62.	Shelton	2/27/69	1/26/71	23
63.	VanValkenberg	6/14/68	12/15/70	30
64.	Holmes	6/27/69	12/8/70	17
65.	Duffen	12/3/68	11/23/70	24
66.	Oliver	12/30/68	11/23/70	23
67.	Marquez	1/16/68	11/10/70	34
68.	Orlando	7/31/68	11/10/70	27
69.	Costello	8/24/67	11/4/70	38
70.	Kelsey	8/7/69	11/4/70	20[9]

[1]Date of notice of appeal unknown. Date shown indicates date of defendant's request for findings.

[2]Appeal by State (of Dismissal of entire jury panel).

[3]Appeal by State; No request for findings, draft findings, and findings required.

[4]Appeal of jury's verdict only, no request for findings, draft findings, and findings requir

[5]Appeal by State; No request for findings, draft findings, and findings required.

[6]Motion to set appeal; No request for findings, draft findings, and findings required.

[7]Appeal involved right to withdraw guilty plea.

[8]Direct appeal resulting from advice to defendant in state habeas corpus appeal of same issues

[9]See N. 4.

APPENDIX A TO TABLE I: CASES ARGUED AND OR DECIDED — 1974 *

NAME OF CASE	DATE OF NOTICE OF APPEAL	DATE OF FINAL DECISION (D) OR ARGUMENT (A)	LENGTH OF TIME (MOS.)
TE vs:			
1. Smith	11/20/72	1/22/74(D)	14
2. Watson	6/6/71[1]	1/15/74(D)	31+
3. L'Heureux	3/9/72	1/3/74 (A)	22+
4. Clements	4/28/72	1/2/74 (A)	20+
5. Barbato	6/8/72	1/1/74 (D)	19
6. Clemente	12/12/69	12/11/73 (A)	36+
7. Croom	12/1/72	12/7/73 (A)	12+
8. Sober	2/8/71	12/7/73 (A)	34+
9. Mullens	12/1/70	12/4/73 (A)	36+
10. Tully	6/17/71	12/4/73 (A)	30+

* NOTE: No Statistics Available for Unargued Pending Appeals.

1. See N-1 of Table I

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APPENDIX B TO TABLE I: SUMMARY

LENGTH OF TIME (MOS.)	NUMBER OF CASES 1974	NUMBER OF CASES 1973	NUMBER OF CASES 1972	NUMBER OF CASES 1970-1	TOT
UNDER 18 MONTHS	2	2 [1]	2 [2]	3 [3]	7
18 - 30 MONTHS	3	8	13	17	38
31 - 40 MONTHS	5	6	7	5	18
41 - 50 MONTHS		1	1	3	5
OVER 50 MONTHS		1	1	0	2
		18	24	28	70

AVERAGE: 30 MONTHS

1. ONE WAS AN APPEAL BY THE STATE
2. SPECIAL APPEALS NOT REQUIRING REQUEST FOR FINDINGS, DRAFT FINDINGS AND FINDINGS
3. SPECIAL APPEALS, SEE NS 6 & 7, SUPRA, OF TABLE I

TABLE II

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TABLE II

MATERIAL CHRONOLOGY REGARDING CONNECTICUT
CRIMINAL APPEALS
DECIDED SINCE NOVEMBER, 1970

NAME OF CASE	DATE OF CONVICTION	DATE OF NOTICE OF APPEAL	DATE OF REQUEST FOR DRAFT FINDINGS[1]	DATE OF FINDINGS	DATE OF ASSIGNMENT OF ERRORS	DATE OF DECISION[2]
Blyden	2/23/71	5/2/71	7/8/71	10/1/71	11/19/71	12/18/73
Sulman	2/25/70	5/15/70	10/15/70	4/10/72	5/16/72	12/18/73
Bzdyra	9/4/72	10/12/72	12/4/72	12/29/72	1/24/73	11/20/73
Peay	6/15/71	9/13/71	12/16/71	5/22/72	8/14/72	11/13/73
Palozie	[3]	11/4/70	12/29/71	3/24/72	4/19/72	7/24/73
Romano	1/20/71	2/9/71	10/11/71	1/27/72	9/14/72	7/10/73
Chisholm	|	4/23/71	6/8/71	1/12/72		6/26/73
Delmonaco			12/1/70	1/19/72	12/25/72	6/26/73
Evans	9/17/70	10/8/70	6/15/71	2/24/72	3/1/72	6/19/73
Uriano		3/26/71	4/30/71	11/30/71	5/15/72	6/19/73
Villafane		6/30/72	7/24/72	9/12/72	9/14/72	5/8/73
Bealieu	3/19/71	4/19/71	10/29/71	1/10/72	2/9/72	5/1/73
Brathwaite	1/14/71	4/8/71	11/9/71	1/3/72	3/7/72	5/1/73
Moynahan	2/3/70	3/19/70	2/10/71	8/10/71	8/20/71	4/24/73
Atkinson	2/4/70	4/17/70	5/3/71	11/5/71	12/29/71	4/3/73
Cobbs	4/29/68	1/6/69	1/6/69	8/12/70	12/1/70	4/3/73
Baker	2/25/71	3/26/71	3/26/71	10/27/71	1/7/72	2/13/73

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TABLE II CONT.

E OF CASE	DATE OF CONVICTION	DATE OF NOTICE OF APPEAL	DATE OF REQUEST FOR DRAFT FINDINGS	DATE OF FINDINGS	DATE OF ASSIGNMENT OF ERRORS	DATE OF DECISION
ilsolm	11/9/70	12/8/70			3/3/71	4/25/72
wkins		3/31/70	3/31/70		10/1/70	3/22/72
ckson	8/19/70	9/9/70			9/9/70	3/22/72
ush	3/13/69	3/27/69	8/8/69	1/28/70	3/4/70	2/15/72
hnson	3/20/69	4/29/69	9/2/69	5/8/70	5/15/70	1/25/72
	9/12/68	9/29/68	7/17/69	2/2/70	4/27/70	1/11/72
arson	6/10/69	10/21/70			10/21/70	1/4/72
tting	2/9/70	4/10/70	4/10/70	7/9/70	7/16/70	12/21/71
lgado	12/6/67	12/20/67	3/29/68	2/17/69	4/1/69	12/7/71
sser		4/7/70	7/14/70	9/15/70	10/22/70	10/27/71
rker	9/12/68	1/15/69	5/15/69	3/4/70	3/13/70	8/31/71
vage	4/18/69	5/20/69	9/15/69	1/16/70	1/28/70	7/27/71
rwin	1/15/69	2/13/69	5/29/69	10/15/69	11/25/69	7/20/71
liver	4/18/69	5/22/69	10/15/69	1/13/70	3/30/70	7/20/71
buzzi		2/23/68	12/1/69	1/8/70	1/20/70	6/8/71
ascucci	6/19/69	4/10/70			4/10/70	7/13/71
riggs	11/26/68	10/30/69	10/30/69	7/9/70	8/20/70	6/8/71
reene	5/9/68	7/3/68	12/1/69	1/8/70	1/20/70	6/8/71
rown	11/8/67	3/14/69				

Clark	5/28/70	8/26/70	4/28/71	8/30/71	9/13/71	1/16/73
Gutkridge	10/8/70	11/6/70	1/29/71	8/31/71	9/9/71	12/26/72
Cofone	6/3/70	6/15/70	4/21/71	8/25/71	10/8/71	12/19/72
Kearney	11/22/67	12/29/67	12/26/68	11/22/69	12/3/69	12/12/72
Dubina	6/10/69	10/10/69	4/16/71	6/8/71	8/20/71	12/5/72
Ferraro	3/5/70	3/25/70	8/28/71	6/30/71	8/20/71	12/5/72
Pascucci	11/21/69	4/16/70	5/19/70	10/27/70	2/18/71	12/5/72
Keeler	7/31/70	9/4/70	1/15/71	7/28/71	8/12/71	11/7/72
Edwards		3/23/70	12/15/70	5/27/71		8/27/72
Maycll	1/27/70	2/3/70	11/30/70	5/28/71	6/10/71	8/1/72
Hin[illegible]	6/19/69	7/10/69	3/6/70	1/20/70	3/5/71	8/1/72
Vega	11/13/69	12/22/69	5/29/70	5/17/71	9/10/71	7/4/72
LaSelva		2/19/71			7/29/71	6/27/72
Lombardo	9/10/70	11/13/70	12/30/70	4/13/71	4/19/71	6/20/72
Cari	12/6/68	12/23/68	9/18/69	12/10/70	12/18/70	6/13/72
Krause	10/30/69	2/16/70	9/10/70	11/23/70	12/14/70	5/23/72
Brown	8/20/70	12/1/70	2/17/71	3/1/71	3/18/71	5/16/72
Grayton	3/12/70	6/5/70	7/6/71	8/16/71	8/19/71	5/11/72

					6/15/70	6/1/71
one	4/27/67	5/12/67	10/9/67	4/19/68	10/30/68	4/20/71
ah	12/17/68	1/31/69	3/31/69		12/29/69	3/30/71
o	3/12/69	11/28/69	11/28/69	5/6/70	6/11/70	3/24/71
eux	4/15/69	5/23/69	8/15/69	1/27/70	3/30/70	3/17/71
oro	7/2/68	9/3/68	12/16/68	10/1/69	11/13/69	2/3/71
n	9/29/61	7/25/69	7/25/69	7/25/69	12/2/69	1/26/71
nas	9/6/67	10/5/67	12/15/67	1/23/68	3/4/68	1/26/71
lton	1/30/69	2/27/69	6/30/69	4/3/70	4/10/70	1/26/71
Valkenberg	5/24/68	6/14/68	3/17/69	12/11/69	12/18/69	12/15/70
nes	1/29/69	6/27/69	6/27/69	10/27/69	11/17/69	12/8/70
n		10/3/68	9/8/69	10/27/69	11/12/69	11/23/70
ver	4/11/68	12/30/68	12/30/68	9/15/69	9/24/69	11/23/70
quez	12/20/57	1/16/68	11/1/68	4/23/69	6/25/69	11/10/70
ando	7/23/68	7/31/68	4/11/69	9/25/69	9/3/69	11/10/70
tello	6/8/66	8/24/67	3/22/68	6/17/68	3/19/70	11/4/70
sey	10/17/68	3/7/69			3/7/69	11/4/70

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cf submission of counterfindings are not submitted, as unavailable.

of submission of Briefs are not submitted, as Connecticut Briefs are not dated.

spaces contained within this Table reflect an absence of official data.

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APPENDIX A TO TABLE II

CASES ARGUED OR DECIDED IN 1974

ME OF CASE	DATE OF CONVICTION	DATE OF NOTICE OF APPEAL	DATE OF REQUEST FOR DRAFT FINDINGS	DATE OF FINDINGS	DATE OF ASSIGNMENT OF ERRORS	DATE OF DECISION
Smith	2/2/72	11/22/72	2/8/73	4/10/72	4/18/73	1/22/74 D
Watson	12/8/70		6/14/71	5/2/72	5/26/72	1/15/74 D
'Heureux	3/25/71	3/9/72	3/9/72	9/25/72	11/5/72	1/3/74 A
Clements	12/16/71	4/28/72	10/25/72	12/21/72	1/2/73	1/2/74 A
Barbato	5/4/72	6/8/72	11/30/72	1/4/73	1/19/73	1/1/74 D
Clemente	11/21/69	12/12/69	10/19/70	8/28/72	9/6/72	12/11/73 A
Croom	12/1/71	12/1/72	8/17/72	9/26/72	11/20/72	12/7/73 A
Sober	12/17/70	12/8/71	11/4/71	2/3/72	2/22/72	12/7/73 A
Mullens	5/21/70	12/1/70	7/29/71	6/5/72	6/15/72	12/4/73 A
Tully		6/17/71	12/15/71	4/10/72	5/15/72	12/4/73 A

TABLE V

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TABLE V

LENGTH OF TIME BETWEEN NOTICE OF APPEAL AND DRAFT FINDINGS, Nov. 1970 - Jan. 1974

LENGTH OF TIME (MONTHS)	NUMBER OF CASES (1973)	NUMBER OF CASES (1972)	NUMBER OF CASES (1970-1)	TOTAL
0-2	6	4	7	17
3-7	4	6	13	23
8-11	4	6	4	14
over 11	2	4	1	7
	16	20	25	61

TABLE VI

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TABLE VI

LENGTH OF TIME BETWEEN DRAFT FINDING AND FINDING, NOV., 1970 - JAN., 1974

LENGTH OF TIME (MONTHS)	NUMBER OF CASES (1973)	NUMBER OF CASES (1972)	NUMBER OF CASES (1970-1)	TOTAL
0-2	4	4	5	13
3-7	10	9	11	30
8-11	1	3	8	12
over 11	3	2	0	5